United Nations CERD/C/BIH/CO/12-13

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined twelfth and thirteenth periodic reports of Bosnia and Herzegovina*

1. The Committee considered the combined twelfth and thirteenth periodic reports of Bosnia and Herzegovina (CERD/C/BIH/12-13), submitted in one document, at its 2652nd and 2653rd meetings (CERD/C/SR.2652 and 2653), held on 9 and 10 August 2018. At its 2670th meeting, held on 23 August 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the twelfth and thirteenth periodic reports of the State party.

3. The Committee expresses its appreciation for the frank and constructive dialogue with the State party's large delegation. The Committee wishes to thank the delegation for the information provided during the consideration of the report, and for the additional information submitted during the dialogue.

B. Positive aspects

4. The Committee welcomes the State party's expressed commitment to apply the basic principles of the International Convention on All Forms of Racial Discrimination and to protect human rights and fundamental freedoms enshrined in its Constitution and legislation, as well as its efforts to amend its policies, programmes and administrative measures to ensure further the protection of human rights and implementation of the Convention, including:

(a) The new Law on Asylum, in 2016;

(b) The amendments to the Law on Prohibition of Discrimination, in 2016;

(c) The amendments to the Law on Citizenship, in 2016;

(d) The amendments to the Law on the Ombudsman for Human Rights, in 2015;

(e) The Law on Foreigners, in 2015;

(f) The Revised Action Plan for Addressing Roma Issues in the Field of Employment, Housing and Health Care 2016–2020.

* Adopted by the Committee at its ninety-sixth session (6–30 August 2018).

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C. Concerns and recommendations

Persisting ethnic tensions, ethno-religious divisions and need for reconciliation

5. The Committee is aware of the devastating effects of the war between 1992 and 1995 and the efforts made to reconstruct the society, but remains concerned that more than 20 years after the war ended and the conclusion of the Dayton Peace Agreement, the country remains divided along ethnic and ethno-religious lines; and such divisions have become common place, as illustrated by recurring ethnic tensions including at the political and administrative levels. The Committee is also concerned that such divisions permeate ethnic and national groups across the territory and pose obstacles to the decision-making process and efforts towards more confidence-building, through the adoption of laws, institutions and strategies that foster integration and reconciliation and, therefore, hinder the fight against racial discrimination (arts. 1, 2 and 7).

6. **The Committee urges the State party to take all necessary measures, in consultation with all parties across the territory, to overcome ethnic tensions and divisions that hinder the legal, institutional and policy advancement towards a more integrated society and reconciliation, and perpetuate racial discrimination. The Committee recommends that the State party take concrete measures to find a solution to promote a more integrated society based on the values of equality and non-discrimination, and in which all citizens take part, irrespective of their ethnic, ethno-religious or national affiliations.**

Statistics

7. The Committee welcomes the results of the 2013 census published in 2015, but regrets that the State party's report has not provided updated and disaggregated statistics on the ethnic composition of its population and has provided particularly insufficient socioeconomic indicators on the different ethnic and national groups residing in its territory, including Roma, returnees, refugees and asylum seekers. The Committee is concerned about the contradicting information it has received regarding the number of Roma and returnees living in Bosnia and Herzegovina. It is further concerned by the information provided by the State party's delegation that statistics on the number of Roma and returnees were not reliable and were difficult to collect.

8. **The Committee recommends that the State party provide reliable, updated and disaggregated data on the ethnic composition of its population, as well as socioeconomic indicators on ethnic and national groups residing in its territory, including on Roma, returnees, refugees and asylum seekers, to allow the Committee to assess how these groups enjoy their rights under the Convention. The Committee also recommends that the State party develop efficient tools and procedures enabling it to collect reliable data on the number of Roma and returnees living in Bosnia and Herzegovina.**

Compliance of legislation with article 1 of the Convention

9. While noting that the definition of racial discrimination enshrined in article 2 of the Law on Prohibition of Discrimination contains all the grounds enumerated in article 1 of the Convention, the Committee is concerned about the absence of the grounds of "ethnicity", "colour" and "descent" in article 145a (1) of the Criminal Code, which prohibits and criminalizes incitement to racial, ethnic and religious hatred (arts. 1, 2 and 4).

10. **The Committee recommends that the State party include in article 145a (1) of its Criminal Code all the grounds for discrimination in full compliance with article 1 of the Convention and ensure that it is done likewise in the criminal codes.**

Discrimination against citizens not belonging to the three constituent peoples

11. The Committee remains concerned that the State party's Constitution and electoral laws and those existing at entity levels still contain discriminatory provisions that bar "others" from standing as candidates for the Presidency and the House of Peoples, despite

the Committee's previous recommendations (CERD/C/BIH/CO/9-11, para. 5) and the judgment of the European Court of Human Rights in *Sejdić and Finci v. Bosnia and Herzegovina*. The Committee is also concerned at the persistence of discriminatory provisions in some local laws and regulations, which give constituent peoples special privileges over "others" in the Federation of Bosnia and Herzegovina and in the Republika Srpska (art. 2).

12. **The Committee urges the State party to take concrete measures to overcome obstacles to the adoption of amendments to its Constitution and electoral laws at all levels. In that vein, the Committee recommends that the State party encourage all parties to reach a consensus and establish and implement a planned calendar for the implementation of the Committee's recommendations and the judgment of the European Court of Human Rights. The Committee also recommends that the State party ensure that local laws and regulations be amended to enable other ethnic and national groups and the constituent peoples to enjoy the same rights on an equal footing.**

Ombudsman

13. The Committee welcomes the fact that the Institution of Human Rights Ombudsman of Bosnia and Herzegovina has been created and is fully operational but remains concerned: (a) about the limited independence of the Ombudsman; (b) that the special budget line foreseen for the work of the Department for the Elimination of All Forms of Discrimination has not been allocated; (c) about the insufficient financial resources for the Ombudsman; and (d) about the reportedly low level of compliance with the Ombudsman's recommendations (art. 2).

14. **The Committee recommends that the State party expedite the adoption of the draft amendments to the Law on Prohibition of Discrimination and ensure the independence of the Institution of Human Rights Ombudsman, secure its financial autonomy and allocate the necessary financial and human resources for it to effectively carry out its mandate, including anti-discrimination activities, in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Committee also recommends that the State party implement the recommendations issued by the Ombudsman, including those on private legal entities.**

Racist motive as an aggravating circumstance

15. The Committee is concerned about the absence of a provision on racist motive as an aggravating circumstance in the State party's Criminal Code (art. 4).

16. **The Committee recommends that the State party include in its Criminal Code a provision on racist motive as an aggravating circumstance.**

Compliance of criminal legislation with article 4 of the Convention

17. The Committee is unclear whether the State party criminalizes the public dissemination of racist propaganda and the promotion of ideas of racial superiority. It is concerned that the State party's criminal legislation does not explicitly criminalize organizations promoting racial discrimination, the support or assistance provided to such organizations and participation in their activities (art. 4).

18. **The Committee recommends that the State party amend its criminal legislation to fully comply with the provisions of article 4 of the Convention.**

Racist hate speech and hate crimes

19. The Committee is concerned about reports of racist hate speech and discriminatory and disparaging statements in public discourse by public and political figures. The Committee is also concerned that racist hate speech has become common in the media, including on the Internet, and is also expressed in the forms of nationalistic and ethno-

religious rhetoric against the returnees. The Committee is further concerned at reports of anti-Semitic hate speech in sports and about incidences of hate crime against Roma (art. 4).

20. **Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

(a) **Take appropriate measures to strongly condemn and distance itself from racist hate speech and discriminatory statements in public discourse, including by public figures at the State and entity levels;**

(b) **Call upon those responsible to ensure that their public statements do not contribute to incitement of racial hatred;**

(c) **Effectively apply its legislation by registering, investigating, bringing to justice cases of hate speech and hate crime and sanctioning those responsible with appropriate penalties;**

(d) **Strengthen the resources of the Communications Regulatory Agency and the Press Council and intensify the sensitization of the media, including through the Plan of Action for human rights education for journalists and media professionals.**

Situation of Roma

21. While noting efforts undertaken by the State party, the Committee is concerned about the persistent discrimination and marginalization of Roma in various areas of life, which impede their full integration into society. The Committee is particularly concerned about: (a) the low enrolment rate of Roma children in particular at the secondary and university levels: (b) the severe unemployment of Roma, in particular women, in public and private sectors; (c) the unhygienic housing units in which some Roma live and about the lack of completion of housing projects; (d) the lack of identification documents and the unfamiliarity of Roma with the health-care system, which hamper their access to health care. (art. 5).

22. **The Committee recommends that the State party develop a comprehensive and integrated national strategy on Roma. It should:**

(a) **Strengthen its measures to increase the enrolment of Roma children, including by providing sufficient funding for the effective implementation of the Revised Action Plan on Roma Educational Needs;**

(b) **Consider taking special measures to foster the employment of Roma in the public and private sectors and enhance its measures aimed at developing the employability of Roma, in particular for Roma women;**

(c) **Accelerate the construction projects, provide sufficient funding for their completion and relocate Roma in more adequate housing units;**

(d) **Facilitate access by Roma to identification documents and birth certificates.**

Representation of minority groups in political and public life

23. The Committee is concerned about the very limited representation of ethnic minority groups, in particular Roma, in decision-making bodies and in public office, at the entity and local levels (arts. 2 and 5).

24. **In the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party take concrete measures to ensure that ethnic minority groups, in particular Roma, are adequately represented in decision-making bodies, public office and the civil service at State, entity and local levels.**

Situation of returnees

25. The Committee takes note of the various measures under the Revised Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement, such as the "Sustainable

return of refugees and displaced persons: reconstruction of housing units". However, the Committee is concerned that returnees still face difficulties in their sustainable reintegration into society. In particular, they face certain obstacles in gaining full restitution of their property, and access to the labour market and social benefits in case they change their residence (arts. 2 and 5).

26. **The Committee urges the State party to strengthen its measures aimed at favouring the sustainable return and reintegration of returnees. For that purpose, the Committee recommends that the State party provide sufficient funding for the full implementation of the Revised Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement in different areas of life, such as housing, employment, and access to health care and social benefits. The Committee also recommends that the State party ensure that returnees are not disadvantaged with regard to access to their rights irrespective of where they reside in the territory of the State party.**

Segregation in education

27. The Committee is concerned about the persistence of the "two schools under one roof" practice in some cantons of Central Bosnia and Herzegovina-Neretva as well as of mono-ethnic schools, despite the Committee's previous recommendation (CERD/C/BIH/CO/9-11, para. 11) and the decisions of the Municipal Court of Mostar of 2012 and of the Supreme Court of Bosnia and Herzegovina of 2014 (arts. 2 and 5).

28. **The Committee recommends that the State party strengthen its efforts to end all forms of segregation in the education system, including the practice of "two schools under one roof" and mono-ethnic schools and further develop a common basic curriculum and a more inclusive education system for all children, while respecting their own language.**

Migrants, including asylum seekers, refugees and internally displaced persons

29. The Committee appreciates the efforts made by the State party to satisfy the needs of asylum seekers, refugees and internally displaced persons. However, the Committee remains concerned about the lack of capacity to accommodate all asylum seekers arriving in its territory and about the limited access to regular basic services, such as food, primary health care and psychological support for those residing outside the government-run facilities. The Committee is concerned about reported impediments in access to the asylum procedure, in particular: (a) the requirement of proof of a registered residence in order to apply for asylum, which many potential applicants are unable to secure; (b) the short duration/validity (14 days) of an attested intention to apply for asylum and the authorities' reluctance to renew them; (c) the limited availability of interpretation services and legal aid for asylum seekers during the procedure; (d) the failure to always provide unaccompanied minors with a guardian; (e) that asylum seekers do not always receive information on their rights and obligations; (f) the reported detention of asylum seekers pending consideration of their applications for asylum; (g) that migrants and other minorities are at risk of statelessness (art. 5).

30. **The Committee recommends that the State party:**

(a) **Increase its reception capacity in order to accommodate all asylum seekers and ensure that they have access to basic services;**

(b) **Address shortcomings of its asylum procedure to guarantee that all persons intending to apply for asylum are able to do so and benefit from procedural legal safeguards, including information on their rights, and the provision of free legal aid and interpretation services;**

(c) **Ensure that a decision to use the accelerated procedure is well evaluated, respects all legal safeguards and does not result in a violation of the principle of non-refoulement;**

(d) **Provide unaccompanied minors with guardians at all stages of the asylum procedure;**

(e) **Consider the detention of asylum seekers as a measure of last resort;**

(f) **Pursue its efforts to implement the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Complaints for acts of racial discrimination

31. The Committee is concerned at the very low number of cases of racial discrimination registered, investigated and brought before both the courts and the Ombudsman (arts. 2, 4 and 7).

32. **Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reminds the State party that the absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, fear of social disapproval or reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee recommends that the State party take all the steps necessary to facilitate the access of its population to justice, in particular ethnic minority groups, to disseminate information on legislation relating to racial discrimination and to inform the population residing in its territory about all the legal remedies available to them and of the possibility of obtaining legal assistance.**

Trafficking in persons

33. The Committee is concerned about reports about the persistence of trafficking in persons for economic and sexual exploitation, including Roma children. The Committee regrets the absence of information on the assistance and support provided to victims of trafficking, as well as on the concrete results achieved through the 2016–2019 National Anti-Trafficking Action Plan on the reduction of trafficking in the State party (arts. 2 and 5).

34. **The Committee recommends that the State party firmly enforce its anti-trafficking legislation by facilitating complaints, investigating them, prosecuting and condemning those responsible. The Committee also recommends that the State party provide victims with reparation, including compensation, as well as with assistance and all forms of support, in particular access to shelters, rehabilitation and counselling services. The Committee further recommends that the State party effectively implement its 2016–2019 National Anti-Trafficking Action Plan and conduct an evaluation thereof.**

Prosecution of persons responsible for serious violations of international humanitarian law

35. While noting the information provided by the State party, the Committee is concerned that the prosecution of persons responsible for serious violations of international humanitarian law by domestic courts has not yet been completed (arts. 2 and 6).

36. **The Committee recommends that the State party accelerate the prosecution of the remaining persons responsible for serious violations of international humanitarian law. The Committee considers that justice for victims of wartime atrocities may foster reconciliation among different ethnic and ethno-religious groups in the State party.**

Training courses and awareness-raising campaigns on anti-discrimination legislation

37. While noting the information provided by the State party on training for judges and prosecutors, the Committee is concerned about the reports of the underdeveloped application of the Law on Prohibition of Discrimination by domestic courts (art. 7).

38. **The Committee recommends that the State party intensify and regularly conduct training courses for judges, prosecutors, lawyers and other law enforcement officials on the Law on Prohibition of Discrimination and other anti-discrimination laws and evaluate them regularly, so as to facilitate the application of such legislation by domestic courts.**

D. Other recommendations

Ratification of other treaties

39. **Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization.**

Follow-up to the Durban Declaration and Programme of Action

40. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

International Decade for People of African Descent

41. **In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

Consultations with civil society

42. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations concerned working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Declaration under article 14 of the Convention

43. **The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.**

Amendment to article 8 of the Convention

44. **The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.**

Common core document

45. **The Committee encourages the State party to update its common core document, which dates to 2011, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of**

General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

46. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 8, 14 and 20 (a) and (b) above.**

Paragraphs of particular importance

47. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 18, 26 and 28 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

Dissemination of information

48. **The Committee recommends that the State party's reports be made readily available to and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.**

Preparation of the next periodic report

49. **The Committee recommends that the State party submit its combined fourteenth and fifteenth periodic reports, as a single document, by 16 July 2021, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**